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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No.

JAPANESE WAR NOTES CLAIMANTS ASSOCIATION OF THE PHILIPPINES, INC. (JAPWANCAP, INC.)*

v.

THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Petitioner respectfully prays that a writ of certiorari issue to review the action of the United States Court of Claims, which, on May 12, 1967 denied a re-hearing of its decision of February 17, 1967 which granted the defendant's motion to dismiss plaintiff's amended petition on the ground that the six (6) years Statute of Limitations had run.

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* Consisting of some 150,000 Filipino families, all members of Japwancap, Inc. which is a non-stock civic corporation incorporated under the laws of the Republic of the Philippines, represented by Mr. Alfredo R. Abcede who is the president and executive director of Japwancap, Inc.

OPINION BELOW

The opinion of the Court of Claims is reported in 373 F. (2) 356: 178 Ct. Cl. 630 (1967). It is printed in the Appendix, p. 1a, *infra.*

JURISDICTION

The United States Court of Claims on February 17, 1967 entered its opinion dismissing the action filed in that Court and on May 12, 1967 denied a re-hearing. On timely application Mr. Justice Brennan on July 6th, 1967 signed an order extending the time in which to file this petition for a writ of certiorari to and including September 11, 1967. The jurisdiction of this Court is invoked under 25 U.S.C. Sec. 1255 (1).

QUESTIONS PRESENTED FOR REVIEW

Whether there was such a fraudulent concealment of material facts by the United States as to toll the Statute of Limitations and to estop the United States by its own conduct from raising the defense of the Statute of Limitations.

CONSTITUTIONAL PROVISIONS, CONVENTIONS, AND TREATIES INVOLVED

UNITED STATES CONSTITUTION, 5TH AMENDMENT:

> "No person shall be...deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation."

FIRST HAGUE CONVENTION (1899) AND SECOND HAGUE CONVENTION (1907) SECTION III, ARTICLE XLVI:

> "Family honours and rights, individual lives and private property . . . must be respected.
> Private property cannot be confiscated."

TREATY OF PEACE BETWEEN THE ALLIED POWERS AND JAPAN:

Article 14(b)

"Except as otherwise provided in the present Treaty, the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan or its nationals in the course of the prosecution of the war, and claims of the Allied Powers for direct military costs of occupation."

STATEMENT OF THE CASE

In the Japanese occupation of the Philippine Islands during World War II Japanese occupation currency was used as legal tender. Refusal to accept such currency at face value was severely punished by the Japanese.

During this same period the United States secretly printed and circulated large amounts of counterfeit Japanese occupation currency, practically identical with the genuine Japanese occupation currency, which was used by the United States to support its agents in the Philippines and for sabotage and dislocation of the Philippine economy while under Japanese occupation.

Plaintiff, representing persons who were United States citizens and nationals residing in the Philippine Islands during World War II, seeks compensation for the large amounts of counterfeit Japanese occupation currency issued by the United States which it holds and which became valueless immediately following the Japanese surrender.

Plaintiff claims that under the United States Constitution, the secret manufacturing and circulation in the Philippines by the United States of counterfeit Japanese occupation currency constituted a taking of private property without due process of law or just compensation and violated the Fifth Amendment to the Constitution, as well as the First and Second Hague Conventions to which the United States is a signatory.

In the Court of Claims plaintiff also claimed compensation for the genuine Japanese occupation currency as well as compensation for losses of human life and property, all of which claims were alleged to have been waived by Article 14(b) of the Japanese Peace Treaty. Such waiver is alleged to have been forced upon the Philippine Government under duress by the United States. However this Petition for Certiorari does not involve these latter claims but solely plaintiff's claim for redemption of the counterfeit currency which was secretly manufactured and circulated by the United States.

This Petition seeks a remand to a Commissioner to take evidence on the extent of plaintiff's knowledge relative to the currency operations of the United States within the territorial limits of the Philippine Islands during World War II. Specifically, did the defendant by classifying everything pertaining to the counterfeiting as "TOP SECRET" make such operations "inherently unknowable" at the time of the accrual of plaintiff's claim, and did defendant so conceal its acts as to keep plaintiff unaware of the existence of the counterfeiting until the Statute of Limitations had already run? *Urie* v. *Thompson*, 337 U.S. 163, 169 (1949)

REASONS FOR GRANTING THE WRIT

The issues here involved concern the honor and integrity of the United States as sovereign and trustee of the basic rights of Filipinos who were citizens and nationals of the United States, and go far beyond the particular facts and parties involved. These issues are so unusual and are of such substance and importance under the Constitution, laws and treaties of the United States that they warrant review by this Court.

The defendant based its defense against plaintiff's suit on the six year Statute of Limitations, and the Court of Claims granted the defendant's Motion to Dismiss. However, plaintiff believes that since the action of the Court of

Claims was based upon Defendant's Motion to Dismiss, then the factual allegations in plaintiff's Petition, in its Answer to Defendant's Motion to Dismiss, in its Memorandum Reply to the Commissioner's Opinion, and in the Affidavit of Mr. Alfredo Abcede that it did not learn until 1964 of the secret plans and orders of defendant for counterfeiting Japanese occupation currency, should, under the following cases, be assumed to be true and correct:

Guessefeldt v. *McGrath,* 342 U.S. 308, 310 (1952)

United States v. *New Wrinkle, Inc.,* 342 U. S. 371, 373 (1952)

In *Holloway* v. *Appleget,* (New Jersey 1897), 40 At. 27, the Court held (p. 28)

> "there . . . is no reason why a court of equity should not, by the use of its injunctive power, disarm a defendant from using the statute (of limitations) fraudulently in an action at law."
>
> ". . . it seems clear that a court of equity will interfere, although the cause of action may not have arisen out of a technically fraudulent act, *if the defendant has employed any means to mislead the plaintiff, or to hide from him the fact that a cause of action has arisen.*" (Emphasis added)

In *Mulholland* v. *United States,* (1964) 165 Ct. Cl. 231, the Court of Claims ruled that a fraudulent concealment tolls the Statute of Limitations and held in abeyance the defendant's motion for summary judgment pending a trial to determine whether a fraud was in fact practiced by the defendant and if so, when the plaintiff discovered such a fraud.

In *Ayako Honda* v. *United States,* No. 164, October Term, 1966, this Court in effect held that the bar of the Statute of Limitations should be liberally construed in favor of the plaintiff and under the facts of that case, invoked the equitable principle of tolling the statute of limitations.

In *Murphy* v. *Dyer,* 260 F. Supp. 822 (1966) it was held, in a medical malpractice suit brought long after the Colorado statute of limitations had run, that where a defendant fraudulently conceals material facts, the statute of limitations is tolled and a motion to dismiss will be denied. The same result was reached in:

Johnson v. *St. Patrick's Hospital,* 417 Pac. (2) 469 (1966)

Morgan v. *Grave Hospital,* 144 S.E. (2) 156 (1965)

Airs v. *Bonebrake,* 313 Pac. (2) 982 (1957)

Rosane v. *Singer,* 149 Pac. (2) 372 (1944). Also see annotation in 80 A.L.R. (2) 368, 388.

It appears obvious that a wrongdoer should not be permitted to profit by his fraudulent conduct and the statute of limitations should not begin to run until the cause of action is discovered or could through diligence have been discovered. *Trellock* v. *Haselo,* 218 App. Div. 313; 218 N.Y.S. 139, 74 A.L.R. 1317 (1926).

In *U.S.* v. *Dickinson,* 331 U.S. 745, 749 (1947), and in *Klein* v. *US,* 152 Ct. Cl. 221 (1961); cert. denied 366 U.S. 936 (1961), it was held that where plaintiff's loss was neither known nor ascertainable until long after the Statute of Limitations had run, then in such a case the claim is not barred by the Statute of Limitations.

Plaintiff concedes, as Judge Durfee in his learned opinion in the Court of Claims states, that the accrual date of the cause of action was prior to December 14, 1958. However, the orders for the counterfeiting of the Japanese occupation currency were classified "TOP SECRET" by defendant and, in compliance with restrictions inherent in this continued classification, the defendant refused to reveal any information and has successfully resisted all discovery efforts by the plaintiff, via Motions for Calls in the Court of Claims, to obtain any information on the counter-

feiting operations. Thus the defendant has by its own acts toiled the Statute of Limtations.

The Court of Claims under its Rule 54(b) referred the defendant's Motion to Dismiss to a Commissioner for his recommendations of conclusions of law but no evidence was ever heard by the Commissioner nor was any opportunity ever afforded the plaintiff to testify or to put evidence into the record nor was any request ever made for any information from either the plaintiff or defendant nor was the case ever scheduled for a conference or oral argument before the Commissioner.

The intent of this Petition is to have the plaintiff's case remanded to a Commissioner to take evidence as to the extent of plaintiff's knowledge and whether a fraudulent concealment by defendant was practiced upon plaintiff and when the plaintiff discovered such fraud. However, plaintiff also believes that the following equitable considerations are important:

After World War II had ended, the United States redeemed some $200,000.00 of occupation currency on the island of Mindoro but refused to redeem such occupation currency elsewhere in the Philippines, thus favoring one particular group of holders, for its own reasons, against all others.

According to a news article in the Washington Post of July 16, 1967, (pp. B1-3) after World War II the British Government in Hong Kong as a matter of principle and honor, redeemed through the Hong Kong and Shanghai Bank at face value for the residents of Hong Kong some $35,000,000.00 of Japanese occupation currency which had been put into circulation by the Japanese Government during the occupation of the Crown Colony of Hong Kong.

This Court, in *United States* v. *Arjona*, 120 U.S. 479 (1887) held that the law of nations imposes a duty on the

United States to prevent any injury to another nation or its people by the counterfeiting of its money, as follows:

> p. 479-489 ". . . it was incumbent on the United States as a Nation to use due diligence to prevent any injury to another nation or its people by counterfeiting its money, or its public or quasi public securities. This statute was enacted as a means to an end, that is to say, as a means of performing a duty which had been cast on the United States by the law of nations."

The Japanese occupation notes were a legal medium of exchange and the acts of the United States in secretly counterfeiting such notes offends the law of nations. The technical defense of the Statute of Limitations should not be allowed to defeat the law of nations.

> *Aboitz & Company* v. *Price,* 99 F. Supp. 602, 607, 611, 613, 628 (1951).
>
> *Haw Pia* v. *China Banking Corporation,* G.R. No. L 554; 80 Phil. 604, April 9, 1948.

The United States owes the Philippine holders of its counterfeited currency an obligation of good faith and fair dealing and should give Philippine interests at least equal weight to its own interests in considering payment for its counterfeited occupation currency. *Crisci* v. *Security Insurance Company,* April 2, 1967, 35 L.W. 2629-30.

The United States, as a signatory of the Hague Conventions, is bound to respect private property even in time of War. *Rules of Land Warfare, U.S. War Department, Basic Field Manual FM 27-10,* pp. 320-321, and F.M. *2710 OPNAV 50 E 3, Hague Conventions and Regulations* Sec. III, Art. 46 etc., *Oppenheim,* Vol. II, 6th ed. p. 313.

As a signatory to the Charter of the United Nations and its Division of Human Rights, the United States assumed a grave responsibility for dealing fairly and equitably with its former nationals and citizens in the Philippine Islands.

The claims of plaintiff are based upon the United States Constitution which protects against deprivation of private property without due compensation and without due process of law and upon well recognized principles of international law which prohibit the confiscation of private property, and upon express and implied contracts with the United States Government.

The United States is responsible to its own citizens and nationals for its confiscation of private property.

Seery v. *United States,* 130 Ct. Cl. 481 (1955).

Even a formally ratified treaty cannot accomplish what the Constitution forbids.

The Cherokee Tobacco, 11 Wall. 616.

De Geofroy v. *Riggs,* 133 U.S. 258, 267 (1890).

United States v. *Guy W. Capps,* 204 F. (2) 655 (1955).

The United States, with Philippine help, was completely victorious over Japan in World War II, but the plaintiff has no adequate remedy against Japan because defendant has caused plaintiff's rights to be waived. By its action in sponsoring and imposing Sec. 14(b) of the Peace Treaty upon the Philippines, the United States appears to have shown greater concern for the welfare of its former enemy Japan than for loyal and faithful Filipinos.

On October 6, 1943, President Franklin D. Roosevelt sent a special message to the United States Congress which was widely circulated in the Philippines over General MacArthur's unqualified endorsement. President Roosevelt pledged the entire resources of the United States for the protection of the independence of the Philippines and stated

> "We shall keep that promise just as we have kept every promise which the United States has made to the Filipino people."

The policy of the United States in World War II of secretly counterfeiting and circulating Japanese occupation currency in the Philippines in order to harass the Japanese carried with it an obligation and a commitment to redeem such counterfeit currency after World War II ended.

It is just as important that the United States as a nation keep its word as it is that a single State in the Union keeps its word.

> *Trustees of Dartmouth College* v. *Woodward*, 4 Wheaton 518 (1819).

CONCLUSION

The defendant, by its own conduct in fraudulently concealing material facts, has tolled the Statute of Limitations.

The trust and confidence reposed in the United States by the Philippines is equalled only by the obligation and duty which the United States owes to its former citizens and nationals in the Philippines.

Petitioner should be permitted to have its day in Court and the case should be remanded to a Commissioner of the Court of Claims to hear the evidence.

WHEREFORE the petitioner respectfully prays that certiorari be granted to review the opinion below.

Respectfully submitted,

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Counsel for Petitioner

September 6, 1967

APPENDIX

APPENDIX

APPENDIX

IN THE UNITED STATES COURT OF CLAIMS

No. 416-64
(Decided February 17, 1967)

THE JAPANESE WAR NOTES CLAIMANTS ASSOCIATION OF THE PHILIPPINES, INC. (JAPWANCAP, INC.) v. THE UNITED STATES

Lawrence C. Moore, attorney of record, for plaintiff.

Edward J. Friedlander, with whom was *Assistant Attorney General Barefoot Sanders*, for defendant.

Before COWEN, *Chief Judge*, LARAMORE, DURFEE, DAVIS, COLLINS, SKELTON and NICHOLS, Judges.

ON DEFENDANT'S MOTION TO DISMISS AMENDED PETITION

DURFEE, *Judge*, delivered the opinion of the court:

On January 3, 1942, the Commander-in-Chief of the Imperial Japanese Forces in the Philippine Islands declared that his army of occupation would henceforth use Japanese military currency as legal tender. Approximately six weeks later, the Filipinos were apprised of this directive and ordered to accept the currency at its face value. Those who refused to obey the order were to be severely punished. During their three years of occupation, the Japanese forces appropriated considerable amounts of personal property, food, and other needed commodities. In return, they gave the Filipinos the bulk of the eleven billion pesos of the aptly nicknamed "Mickey Mouse Currency." While the Japanese remained on the islands, General Douglas MacArthur, the Commander-in-Chief of the Allied Forces in the Southwest Pacific Area, ordered the circulation of several hundred million counterfeit Japanese war notes. This

bogus currency was used by the Allied Forces to support United States intelligence agents and the Filipino resistance movement as well as to sabotage and dislocate the economy of the islands during Japanese occupation.[1]

Plaintiff is a Philippine corporation with between 130,000 and 150,000 members, all owning various amounts of both the real and the counterfeit Japanese currency. Their total holdings of 3.5 billion pesos have been deposited in a concrete vault under the custody of the president of plaintiff corporation. Plaintiff filed its petition in this court on December 15, 1964. The petition seeks: (1) reimbursement for the counterfeit money in its possession, (2) redemption by the United States of the Japanese-issued war notes, and (3) payment by the United States of its claims against Japan for the loss of human life and physical destruction. The damages sought total slightly under ten billion dollars.

I

This court lacks jurisdiction to hear a claim that is not filed "within six years after such claim first accrues." 28 U.S.C. § 2501; *Soriano* v. *United States*, 352 U.S. 270, 273-274 (1957). A claim first accrues when all the events have occurred which fix the alleged liability of the United States and entitle the claimant to institute an action.[2] For its claim to be timely, plaintiff must show that events which directly affect the rights asserted in this suit took place after December 15, 1958, or within six years prior to the filing of this petition. *Baer* v. *United States*, 164 Ct. Cl.

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[1] To facilitate discussion, we assume that the factual allegations in the petition are true. *Guessefeldt* v. *McGrath*, 342 U.S. 308, 310 (1952); *United States* v. *New Wrinkle, Inc.*, 342 U.S. 371, 373 (1952).

[2] *Nager Electric Co., Inc., and Keystone Engineering Corp.* v. *United States*, 177 Ct. Cl. —, 368 F. 2d 847, 851-852 (1966), and cases cited therein. See also, *Developments in the Law—Statutes of Limitations*, 63 Harv. L. Rev. 1177, 1201 (1950).

447, 450, *cert. den.* 379 U.S. 878 (1964). See, also, *United States* v. *Dickinson,* 331 U.S. 745, 749 (1947); *Klein* v. *United States,* 152 Ct. Cl. 221, *cert. den.* 366 U.S. 936 (1961).

The facts demonstrate that the accrual date was prior to December 14, 1958. The Japanese occupation of the Philippines formally ended on September 2, 1945. 59 Stat. 1733; *Compania Maritima* v. *United States,* 136 Ct. Cl. 697, 706, 145 F. Supp. 935 (1956); *Marcos* v. *United States,* 122 Ct. Cl. 641, 102 F. Supp. 547 (1952). At that time the Japanese mandate requiring acceptance of the currency lost all force as the Filipinos no longer had to fear punishment for refusing the war notes. Since no evidence has been presented arguing that the distribution halted at any other time, this date is the logical one for determining when the Japanese and the Americans quit circulating both the real and the counterfeit money. Plaintiff bases its claims for United States indemnification of its rights against Japan on the Treaty of Peace between the Allied Powers and Japan.[3] The proclamation of the treaty was on April 28, 1952. At this time, plaintiff's rights under the treaty became fixed inasmuch as there existed only an indefinite possibility that events would take place which would alter the treaty and concomitantly plaintiff's rights under it. As this court said in *Baer* v. *United States, supra,* at p. 451:

> * * * The bare possibility that some future international settlement—conceivably, decades in the future—*might* authorize plaintiff to collect his debt in full could not postpone the accrual of so specific a claim of present deprivation. This case is wholly unlike the

[3] It alleges that the U.S. assumed all claims against Japan by virtue of Article 14(b) of the Treaty:

"Except as otherwise provides in the present Treaty, the Allied Powers waive all reparation claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war, and claims of the Allied Powers for direct military costs of occupation."

Dickinson and comparable cases in which the course of future events could reasonably be expected to have a direct effect on the claimant's rights. Here the future circumstance on which the plaintiff relies was a mere indefinite possibility which was too slight to arrest the accrual of the claim (if one existed).

II

In certain instances the running of the statute will be suspended when an accrual date has been ascertained, but plaintiff does not know of his claim. Ignorance of rights which should be known is not enough. *Art Center School* v. *United States,* 136 Ct. Cl. 218, 227, 142 F. Supp. 916, 921, (1956); *Thomas* v. *United States,* 125 Ct. Cl. 76, 80 (1953); *Dion* v. *United States,* 137 Ct. Cl. 166 (1956); *Navajo Freight Lines, Inc.* v. *United States,* 176 Ct. Cl. (No. 316-63), (Decided July 15, 1966). Plaintiff must either show that defendant has concealed its acts with the result that plaintiff was unaware of their existence or it must show that its injury was "inherently unknowable"[4] at the accrual date. An example of the latter would be when defendant delivers the wrong type of fruit tree to plaintiff and the wrong cannot be determined until the tree bears fruit. See 1 *Williston on Sales,* § 212(a) (Rev. ed. 1948). In this situation the statute will not begin to run until plaintiff learns or reasonably should have learned of his cause of action. Dawson, *Fraudulent Concealment and Statutes of Limitations,* 31 Mich. L. Rev. 875 (1933); Harv. L. Rev. *supra. But cf. Pickett* v. *Aglinsky,* 110 F. 2d 628 (4 Cir. 1940); *Kennedy* v. *Johns-Manville Sales Corp.,* 135 Conn. 176, 62 A. 2d 771 (1948).

Plaintiff makes no argument that the peace treaty with Japan was either concealed by defendant or "inherently unknowable" until a date later than the accrual of its cause of action. With regard to the counterfeit currency, it as-

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[4] *Urie* v. *Thompson,* 337 U.S. 163, 169 (1949).

serts that defendant withheld information and that it was not possible for it to know of the counterfeiting until 1964. Once the statute of limitations has been tolled, it is not necessary that plaintiff obtain a thorough understanding of all the facts to halt the suspension. Defendant is not required to wait until plaintiff has started substantiating its claims by the discovery of evidence. Once plaintiff is on inquiry that it has a potential claim, the statute can start to run. See, Mich. L. Rev. *supra,* at 912. This standard is in line with the modern philosophy of pleading which has reduced the requirements of the petition and left for discovery and other pretrial procedures the opportunity to flesh out claims and to define more narrowly the disputed facts and issues. See Ct. Cl. Rules 13-18, 38-46.[5]

Assuming *ad arguendo* that either defendant concealed the counterfeiting or that it was "inherently unknowable," we find from the following that plaintiff was on inquiry that its cause of action existed at a date prior to six years before it filed its petition.

In 1946, the Britannica Year Book stated at p. 572-573:

> * * * Finances were in a chaotic condition due to the various currencies in use. The Japanese during their three and one-half years of occupation, had printed billions of dollars of worthless paper money which was widely circulated and used for all business purposes. This condition was accentuated by the issuance of millions of pesos through guerilla organizations to maintain fighting units so vital to the ultimate success of the U.S. The issuance of this currency was authorized by the U.S. Army.

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[5] See, also *Conley* v. *Gibson,* 355 U.S. 41 (1957); *Dioguardi* v. *Durning,* 139 F. 2d 774 (2 Cir. 1944); *Nagler* v. *Admiral Corp.,* 248 F. 2d 319 (2 Cir. 1957); la Barron and Holtzoff § 255 (Wright ed.). *But cf.* McCaskill, *The Modern Philosophy of Pleading—A Dialogue Outside the Shades.* 38 ABAJ 123 (1952).

In the following year, reference was made to the bogus currency in a leading financial journal:

> * * * The position of the Filipinos seems to be bolstered by the fact that the Australian and American Governments had also printed about 30 million of the Mickey Mouse for use by their agents in the islands during the occupation. The American and Australian-printed Mickey Mouse also contributed to the inflation, and the Filipino people can hardly be penalized for its use of that currency. Ortigas, "Aftermath of Japanese Currency in Philippines." 165 The Commercial and Financial Chronicle 1378, 1407, Col. 3 (March 3, 1947).

On December 10, 1952, the President of plaintiff corporation wrote the following to Mrs. Franklin D. Roosevelt:

> Since the United States Government cannot deny that General MacArthur has also falsified the "Japanese Currency," America should be the first to initiate this act of "Goodwill" towards her ally, not only as a reward but as a token and in recognition of our sufferings and all the things we have lost due to those War Notes which was [sic] paid in exchange of our properties, animals and plants thus making us destitutes and hungry and poor as a beggar this being the only chance whereby our families could survive.

A letter of similar content, but of greater length was mailed on the same date to the President of the General Assembly of the United Nations.

In conclusion, we hold that plaintiff's cause of action accrued at a date more than six years prior to its instituting suit in this court. Therefore, plaintiff's claim is time-barred and outside this court's jurisdiction. Defendant's motion is granted, and the amended petition is dismissed.